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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/755,492

01/12/2004

William J. Deakin

25040-0951

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08/16/2007

SUTHERLAND ASBILL & BRENNAN LLP  
999 PEACHTREE STREET, N.E.  
ATLANTA, GA 30309

EXAMINER

GART, MATTHEW S

ART UNIT

PAPER NUMBER

3625

MAIL DATE

DELIVERY MODE

08/16/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/755,492

Applicant(s)

DEAKIN ET AL.

Examiner

Matthew S. Gart

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on RCE 6/29/2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) 13-41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/29/2007 has been entered.

### ***Prosecution History Summary***

- Claims 1-41 are pending in the instant application.
- Claims 13-41 were withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention.
- Claims 1-12 are rejected as set forth below.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- Claims 1 recites the limitation "the vicinity" in line 9. There is insufficient antecedent basis for this limitation in the claim.

Claims 2-12 are dependent on claim 1 and acquire the deficiencies as set forth in claim 1.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-2, 5-7 and 10-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Abell (Patent Application Publication 2003/0172028).**

Referring to claim 1. Abell discloses a product container, comprising:

at least one product selector, wherein the at least one product selector is selectable by a consumer to identify a physically tangible product for purchase (Abell: Fig. 2, "Terminal 209");

a network interface, wherein said network interface facilitates communication of the product container with a network (Abell: Fig. 2, "Background Network 205"); and

a wireless access point, which provides a wireless communication via the network for at least one device associated with the customer, wherein the wireless access point requests either validation of the consumer or payment information when the at least one device is determined to be within the vicinity of the wireless point (Abell: paragraph 0035 and paragraph 0036),

wherein the product container is operable to dispense the product selected by the consumer (Abell: paragraph 0035 and paragraph 0036).

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Referring to claim 2. Abell further discloses a product container wherein the network is the Internet (Abell: paragraph 0031).

Referring to claim 5. Abell further discloses a product container wherein the container is operable to communicate with a content server via the network interface (Abell: Fig. 2, "07").

Referring to claim 6. Abell further discloses a product container wherein the container is operable to receive information from the consumer, and wherein the container is further operable to upload the information received from the consumer to the content server (Abell: paragraph 0035 and paragraph 0036).

Referring to claim 7. Abell further discloses a product container comprising an output device, wherein said output device is operable to display content transmitted to said container from said content server (Abell: Fig. 6, "611").

Referring to claim 10. Abell further discloses a product container wherein the container is selected from the group of containers consisting of a fountain machine and a vending machine (Abell: Fig. 2, "Terminal 209").

Referring to claim 11. Abell further discloses a product container comprising at least one sensor, wherein the at least one sensor is operable to identify the presence of a person near the product container (Abell: paragraph 0035 and paragraph 0036).

Referring to claim 12. Abell further discloses a product container wherein the at least one sensor is selected from the group of sensors consisting of a motion sensor, a microphone, a light sensor, and a radio-frequency sensor (Abell: paragraph 0035 and paragraph 0036).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abell (Patent Application Publication 2003/0172028) in view of Herzog (Patent Application Publication 2005/0189364).**

Referring to claims 3-4. Abell discloses a product container as set forth in claim 1 above. Abell does not expressly disclose a product container comprising consumer-packaged goods (i.e. soft drinks). Herzog in Fig.1 discloses a product container comprising consumer-packaged goods (i.e. soft drinks).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to have modified the product container of Abell to have included the teachings of Herzog because vending machines have always served the purpose of providing an around the clock shopping alternative (Herzog: paragraph 0003).



**Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abell (Patent Application Publication 2003/0172028) in view of Pons (Patent Application Publication 2002/0099608).**

Referring to claims 8-9. Abell discloses a product container as set forth in claim 1 above. Abell does not expressly disclose a product container comprising an output device, wherein said output device is operable to print receipts comprising a reward indicator. Pons discloses a product container comprising an output device, wherein said output device is operable to print receipts comprising a reward indicator (Pons: paragraph 0029).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to have modified the product container of Abell to have included the teachings of Pons in order to increase advertisement efforts (Pons: paragraph 0029).

***Response to Arguments***

Applicant's arguments filed 6/29/2007 have been fully considered but they are not persuasive.

The Applicant argues that the system described in Abell (Fig. 7) does not determine whether a customer is within vicinity of a vending machine, but relies upon the customer to place a call to authorize payment.

The Examiner notes, Fig. 2 of Abell discloses a system, wherein bill payment is accomplished via a Bluetooth enabled device. Bluetooth is a short-range radio technology aimed at simplifying communications among various electronic devices. Bluetooth lets these devices communicate with each other only when they are in range (i.e., within the vicinity of an access point).

The Examiner notes, certain columns and line numbers in the references were applied to the claims for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.


***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew S. Gart whose telephone number is 571-272-3955. The examiner can normally be reached on M-F, 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MSG  
Primary Examiner  
AU 3625

  
MATTHEW S. GART  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 3600